IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1446 of 2003
With
FIRST APPEAL No. 1447 of 2003
With
FIRST APPEAL No. 1109 of 2003

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT
&
HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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ARUNKUMAR KASTURLAL SHAH & 4 - Appellant(s)
Versus
GOKULSINGHJI KISHORSINGHJI RAJPUT & 3 - Defendant(s)

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Appearance :
MR VIBHUTI NANAVATI for Mr PV NANAVATI for Appellants
NOTICE SERVED for Defendant(s) : 1 - 2.
RULE SERVED BY DS for Defendant(s) : 3,
MR SUNIL B PARIKH for Mr AJAY R MEHTA for Defendant(s) : 4,

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT

and

HONOURABLE MR.JUSTICE C.K. BUCH
12th December, 2007

ORAL JUDGMENT *(Per :- HONOURABLE MS. JUSTICE R.M.DOSHIT)*

These three Appeals preferred under Section 173

of the Motor Vehicles Act, 1988 arise from the common judgment and award dated 27th February, 2003 passed by the Motor Accidents Claims Tribunal, Ahmedabad [hereinafter referred to as, "***the Tribunal***"] in Motor Accident Claim Petition Nos. 903 of 2000 and 904 of 2000. The appellants in First Appeal No. 1446 of 2003 are the claimants in the above referred Claim Petition No. 903 of 2000. The appellant in First Appeal No. 1109 of 2003 is the Oriental Insurance Company Limited [hereinafter referred to as, "***the Insurer***"]; the insurer of the offending vehicle, the Truck bearing registration no. RJ-27-G-1026. The appellant in First Appeal No. 1447 of 2003 is the claimant in the above referred Claim Petition No. 904 of 2000.

On 12th July, 2000, one Hiren Arunbhai Shah and one Umeshkumarsing Udaychandsing Rajput were travelling on national highway no.8 *enroute* Udaipur to Ahmedabad in a fiat car bearing registration no. GAL 6123. The car belonged to one Messrs. Compaq Engineers of which the aforesaid Hiren Shah was the sole proprietor. It was the said Hiren Shah who was driving the car and Umeshkumar was on the front

passenger seat. When the car reached near Prantij, at about 5 *O'Clock* in the early morning, it was hit by the offending truck coming from the opposite direction. In the said accident, the said Hiren Shah lost his life and the said Umeshkumar received injuries. The parents, widow and minor children of the deceased Hiren Shah filed the above referred Claim Petition no. 903 of 2000 before the Tribunal for compensation in the sum of Rs.52,00,000/=. The injured-Umeshkumar filed the above referred Claim Petition No. 904 of 2000 for compensation in the sum of Rs. 20,000/=.

According to the claimants, the accident in question occurred on account of the negligence of the driver of the truck. The opponent No.1-Gokul Singhji Kishore Singhji Rajput; the Opponent no.2 Inder Singh Amar Singhji Sisodia, the owner of the offending truck was vicariously liable to pay compensation to the claimants for the tortious act of the truck driver and the opponent no.4 Insurance Company was liable, being the insurer of the offending truck.

Considering the evidence on record : First Information Report, panchnama of the scene of

accident and the evidence of the eye-witness-Umeshkumar, the Tribunal held that the truck driver was indeed rash and negligent, however, the accident could be averted had the car driver been careful. The Tribunal, therefore, attributed 25% negligence to the car driver. In view of the said finding, the compensation awarded to both the set of claimants has been reduced by 25 *per cent*.

In claim petition no. 904 of 2000, considering the extent of injuries suffered by the claimant Umeshkumar and the expenses for medical treatment, he has been held to be entitled to compensation in the sum of Rs. 8,000/=. After reducing the said amount by 25%, he has been awarded compensation in the sum of Rs.6,000/= with interest @ 9% *per annum* and proportionate cost.

As to the claimants in Claim Petition No. 903 of 2000, the learned Tribunal has considered the evidence of income of the deceased Hiren Shah. His monthly average income is estimated at Rs. 24,000/=. After deducing one-third of his income for his personal maintenance and expenses and adopting the multiplier of 15 years, the loss of dependency

benefit is calculated at Rs. 28,80,000/=. To that has been added a sum of Rs. 48,000/= for loss of consortium, loss of estate, funeral expenses, etc. *Thus*, the total compensation payable to the claimants is worked out at Rs. 29,28,000/=. The said amount is reduced by 25%. Thus, the claimants have been awarded compensation of Rs. 21,96,000/= with interest @ 9% per annum and proportionate cost.

Mr. Nanavati has appeared for the claimants in both claim petitions. He has assailed the *impugned* judgment and award passed by the Tribunal. He has submitted that the Tribunal has wrongly held that the car driver was partially responsible for the accident in question and in attributing twenty five *per cent* of negligence to the car driver. He has submitted that considering the facts stated in the FIR and the panchnama of the scene of accident, there is no manner of doubt that the driver of the offending truck was wholly responsible for the accident in question. He has submitted that the finding recorded by the Tribunal is *perverse* and is required to be reversed. He has further submitted that in any view of the matter, if at all the driver of the car were

negligent, the claimant-Umeshkumar, a passenger in the car could not have been held to be negligent nor the compensation payable to him could have been reduced for the negligence of the car driver.

Mr. Nanavati has also assailed the dependency benefit worked out by the Tribunal and the multiplier of 15 years adopted by the Tribunal. He has submitted that the deceased Hiren Shah was 37 years of age; he was a qualified engineer; after serving as a Marketing Manager in a reputed company-M/s. Crompton Greaves Limited, the deceased had started his own business in the name and style of M/s. Duke's Engineering Services in partnership with one Devendra. After dissolution of the said partnership with Devendra, the deceased had started his own business in the engineering products in the name of of M/s. Compaq Engineers. His income from the business was gradually increasing. At the time of his death, his earning was around Rs. 40,000/= a month and was likely to increase further. The learned Tribunal has, however, erroneously worked out monthly income of the deceased at Rs. 24,000/=. He has submitted that the finding recorded by the Tribunal

is contrary to the evidence on record. He has submitted that the claim was supported by the Income Tax Returns filed by the deceased over a period of three years. Apart from the income from business, the deceased was also a visiting faculty in some educational institutions. From that academic *per-suit*, he was earning Rs. 60,000/= a year. He has submitted that considering the age of the deceased, his educational qualification and the healthy life style, a multiplier of 17 would have been appropriate. The compensation awarded to the claimants needs to be enhanced accordingly.

Mr. Parikh has appeared for the Insurer. He has contested the Appeals preferred by the claimants and has assailed the *impugned* judgment and award passed by the Tribunal. He has submitted that the Tribunal has rightly attributed 25% of the negligence to the car driver. The said finding requires to be confirmed by this Court. As to the *quantum* of compensation, he has submitted that the copies of statement of income returned by the deceased disclose yearly income of the deceased from the business or profession at Rs. 1,05,000/= and Rs. 1,14,000/= for the Assessment

Years 1998-1999 and 1999-2000. The return for the A.Y 2000-2001 was filed by widow of the deceased - the claimant no. 2 after his death. The income shown in the said return may have been inflated. The said return, therefore, requires to be considered carefully. He has submitted that considering the actual annual income of the deceased, as disclosed in the above referred two Income tax returns and the possible increase in his income over the years, the average annual income could not be assessed more than Rs. 1,65,000/=. After deducting a sum of Rs. 55,000/= [*one-third of the total income that the deceased would have spent on his maintenance*], the annual dependency loss would be Rs. 1,10,000/=. Considering the age of 37 years of the deceased, the proper multiplier would have been 12 years. The 15 years' multiplier adopted by the Tribunal is excessive. He has submitted that the compensation awarded by the Tribunal requires to be reduced on the aforesaid basis. In support of his submission, he has relied upon the judgments of the *Hon'ble* Supreme Court in the matters of ***New India Assurance Company Limited v. Kalpana & Ors.*** [2007 ACJ 825] and of ***Tamil Nadu State***

Transport Corporation Limited v. S. Rajapriya & Ors. [2005 ACJ 1441].

First we shall deal with the manner in which the accident occurred and the negligence of the car driver; if any. The complaint before the police was lodged by Gokulsinghji Kishorsinghji Rajput, the driver of the truck. The facts stated in the said complaint and the panchnama of the scene of accident and the evidence of the eye-witness Umeshkumar, the passenger in the car leaves us the only conclusion that the truck driver was rash and negligent and was wholly responsible for the accident in question. It is not disputed that the accident occurred on National Highway No.8 near Prantij. The Highway lies North-South. The car was coming from north and was proceeding towards south. The offending truck was coming from south and was proceeding towards north. The offending truck was loaded. The accident occurred on the eastern half of the road i.e., on the right side of the car and the wrong side of the truck. The panchnama reveals the brake marks of the truck tyres, the dent on the tar road and the scratches on the tar. The *impact* was such that both the front tyres of

the truck had flown away. After the chasis of the truck hit the car, the truck dragged down about 100 ft. and came to a halt on the extreme right of the road. It also carried with it, the right front and rear doors of the car. It is evident that it was the offending truck which was on the wrong side of the road. Even after applying brakes, the truck driver could not avoid the collision. After collision with the car, without tyres also, the truck dragged on for another 100 ft. The scene of the accident reveals the momentum with which the offending truck hit the car. The reason which weighed with the Tribunal for holding that the car driver was partially negligent is the absence of brake marks of the car tyres and the statement made by the eye-witness Umeshkumar that the deceased Hiren Shah tried to avoid the collision by taking the car to its left. We are unable to agree that the car driver was partially negligent. We, therefore, hold that it was the driver of the offending truck who was rash and negligent and was wholly responsible for the accident in question.

This brings us to the *quantum* of compensation. In respect of the claim made by the injured Umeshkumar,

there is nothing on the record to support his claim for compensation in the sum of Rs. 20,000/=. The compensation of Rs. 8,000/= worked out by the Tribunal does not warrant interference. The Tribunal has, however, erred in reducing the said amount by twenty five *per cent* for the negligence attributed to the car driver. As recorded hereinabove, we have reversed the finding recorded in respect of the negligence attributed to the car driver. In any view of the matter, the claimant being a passenger in the car, the compensation awarded to him could not have been reduced for the negligence; if any, of the car driver. We, therefore, hold that the appellant in First Appeal No. 1447 of 2000 is entitled to whole of the amount of compensation i.e., the sum of Rs. 8,000/=. The claim for enhancement of the amount of compensation is rejected.

In support of their claim, the claimants in Claim Petition No. 903 of 2000 have produced substantial evidence to establish the income of the deceased-Hiren Shah. It is not in dispute that at the time of his death, the said Hiren Shah was 37 years of age; that he possessed a Degree in Engineering;

that he had served with Crompton Greaves Limited, as averred. His having his own business of trading in engineering products is also not in dispute. The question is what was his income at the time of his death and how it would have increased in future. As disclosed by the statement of income returned by the said Hiren Shah, his income from business or profession for the A.Y 1998-1999 was Rs. 1,20,000/=; his income from business/profession for the A.Y 1999-2000 was around Rs. 1,14,000/= and his income for the A.Y. 2000-2001 i.e., till 12th July, 2000, the date on which he died, was Rs. 1,20,000/=. Though Mr. Nanavati has vehemently argued that the latest return filed after the death of the deceased should govern the computation of compensation, we are not inclined to accept it. As it is evident that last of the returns shows sharp increase in the income of the deceased from less than Rs. 10,000/= per month to Rs. 40,000/= per month. Considering his monthly income of less than Rs. 10,000/= and in view of his professional qualification, we are inclined to hold that his average monthly income can safely be estimated at Rs. 20,000/=. Out of the said amount, a

sum of Rs. 6,000/= would have been spent for maintenance and personal expenses of the deceased, leaving a sum of Rs. 14,000/= as dependency loss to the family. We are of the opinion that 15 years' multiplier adopted by the Tribunal is appropriate. Neither the said multiplier is required to be reduced, as submitted by Mr. Parikh nor it is required to be increased, as submitted by Mr. Nanavati. We are also of the opinion that the compensation in the sum of Rs. 48,000/= for loss of consortium, etc. also does not warrant interference. In view of the above discussion, we hold that the claimants in the Claim Petition No. 903 of 2000 were entitled to compensation as under :-

Rs. 25,20,000=00	Future loss of Income
Rs. 48,000=00	Conventional amount
Rs. 25,68,000=00	

The award for interest @ 9% *per annum* and the proportionate cost is confirmed.

For the aforesaid reasons, all the three Appeals are partly allowed with proportionate cost.

The amount of compensation invested pursuant to the Order dated 25th August, 2003 [*Coram* : ***K.R Vyas, J.,*** *as he then was* ***& Akshay H. Mehta, J.***] made on Civil Application No. 3750 of 2003 be, on maturity, remitted to the claimants in proportion of the proportionment made by the Tribunal. The amount awarded to the minor children be remitted to their mother and natural guardian-the claimant No.3-Rajshree H. Shah.

Mr. Parikh states that in compliance with this Order, the additional amount of compensation will be paid to the concerned claimants *within* eight weeks from *today*.

{C.K Buch, J.} {Ms. R.M Doshit, J.}

*Prakash**